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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,700	06/23/2003	Yu-Chen Chuang	681939-52US	5739

570   7590   06/25/2007

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ART UNIT	PAPER NUMBER
2191	

MAIL DATE	DELIVERY MODE
06/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/600,700	CHUANG ET AL.
	Examiner	Art Unit	
	Satish S. Rampuria	2191	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>26 April 2007</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-23</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-23</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

Response to Amendment

1.   This action is in response to the amendment filed on 04/26/2007.

2.   The objection to drawing (Fig. 1 and 2) is withdrawn in view of Applicant's filed

replacement sheets with the amendment.

3.   Claims amended by the Applicants: 10.

4.   Claims 1-23 are pending.

Response to Arguments

5.   Applicant's arguments with respect to claims have been considered but they are

not persuasive.

In the remarks, the applicant has argued that:

   a) Therefore, nowhere does Birum disclose comparing an additional <u>unselected user terminal</u> (which is a separate entity from both the selected user terminal and the system server) to a selected user terminal in order to determine whether they include different software versions. Also, nowhere does Birum disclose a selected user terminal receiving software from an additional <u>unselected user terminal</u> (which is a separate entity from both the selected user terminal and the system server). Thus, Birum does not disclose (d) determining whether those of said <u>user terminals unselected in step (b)</u> include any of said absent updated software version; and (e) <u>receiving those of said absent updated software versions determined in step (d) to have been included in said unselected user terminals.</u> For this reason, Birum does not disclose or suggest the invention recited in claim 1.

Examiner's response:

In response to applicant's argument that the references fail to show certain

features of applicant's invention, it is noted that the features upon which applicant

relies (i.e., **comparing** an additional unselected user <u>terminal</u> and to a

selected user terminal in order to **determine whether they include**

different software versions) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from

the specification are not read into the claims. See *In re Van Geuns*, 988

F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further, as indicated by the

Applicant that Birum discloses software upgrade in networking environment

where a client requests content for a version that is installed for upgrade

(Summary). A client check to see if it has the most current version of content by

requesting the most recent version number from a content server. If the client

has the most recent version, it may begin executing an application associated

with the content (col. 4 lines 25-45). Nowhere, Birum does not disclose the

receiving software from a server. In addition Birum does disclose pluralily of local

area networks and wide area networks (col. 6, lines 10-47). Applicant only makes

general allegation. Therefore, the rejection is proper and maintained herein.

b) The Examiner states that Fig. 1 and column 4, lines 44-45 of Birum ("A content server sends the list of resources in the most recent version together with a purge list (Block 705)") disclose the "first client provided in said second client-server structure for requesting one of said absent updated software versions from said unselected user terminals" as recited in previous claim 10. However, amended claim 10 recites that a first client provided in said second client-server structure of said first user terminal for receiving one of said absent updated soil-ware versions from said second user terminal. As discussed above in section 1 a, Birum does not disclose the client receiving resources from any other entity than the content server. Thus, nowhere does Birum disclose comparing a second user terminal (which is a separate entity from both the first user terminal and the system server) to a first user terminal in order to determine whether they include different software versions. Also, nowhere does Birum disclose a first user terminal receiving resources from a second user terminal (which is a separate entity from both the first user terminal and the system server). For this reason, Birum does not disclose or suggest the invention recited in claim 10.

Examiner's response:

In response to applicant's argument that the references fail to show certain

features of applicant's invention, it is noted that the features upon which applicant

relies (i.e., **comparing** an additional unselected user terminal and to a

selected user terminal in order to **determine whether they include**

different software versions) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from

the specification are not read into the claims. See *In re Van Geuns*, 988

F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). For the reasons given above for

argument (a) is similar to those made here, thus, given the same rational set

forth in connection with (a).

c) Also, as discussed above in sections 1a and 2a, Birum does not disclose that the client receives resources from any other entity than the content server. Thus, nowhere does Birum disclose comparing a user terminal to other user terminals in order to determine whether they include different software versions and nowhere does Birum disclose a user terminal receiving soRware from other user terminals. For this reason, Birum does not disclose or suggest the invention recited in claim 17.

Examiner's response:

In response to applicant's argument that the references fail to show certain

features of applicant's invention, it is noted that the features upon which applicant

relies (i.e., **comparing** an additional unselected user terminal and to a

selected user terminal in order to **determine whether they include**

different software versions) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from

the specification are not read into the claims. See *In re Van Geuns*, 988

F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). For the reasons given above for

the arguments (a) and (b) is similar to those made here, thus, given the same

rational set forth in connection with (a) and (b).

6.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Claim Rejections - 35 USC § 102

7.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102

that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
 (e) the invention was described in (1) an application for patent, published under section 122(b), by another
filed in the United States before the invention by the applicant for patent or (2) a patent granted on an
application for patent by another filed in the United States before the invention by the applicant for patent,
except that an international application filed under the treaty defined in section 351(a) shall have the effects
for purposes of this subsection of an application filed in the United States only if the international application
designated the United States and was published under Article 21(2) of such treaty in the English language.

8.   Claims 1-23 are rejected under 35 U.S.C. 102(e) as being anticipated by US

Patent No. 6,996,817 to Birum et al. (hereinafter, Birum).

Per claim 1:

Birum discloses:

- A method of software upgrade control for a system server and a sub-network including a plurality of user terminals, the method comprising the steps of:

- (a) providing said system server with updated software versions (col. 1, lines 40-45 "...changing version of an application may be updated...");

- (b) selecting one of said user terminals (See Fig. 2-3 and related discussion);

- (c) requesting from said system server a list of said updated software versions that are absent in said selected user terminal (col. 1, lines 40-45 "...A list of resource in a current version of an application is created and compared to the list of resources in a new version...");

- (d) determining whether those of said user terminals unselected in step (b) include any of said absent updated software versions (col. 1, lines 54-61 "...a determination is made as to when to being changing a current version to a new version on a client...");

- (e) receiving those of said absent updated software versions determined in step (d) to have been included in said unselected user terminals (col. 1, lines 54-61 "...when the determination is made, resources are identified that belong to the current version and the new version...");

- (f) receiving those of said absent updated software versions determined in step (d) to have not been included in said unselected user terminals (col. 1, lines 54-61 "...based on the resources, a determination is made as to the resources that are needed on the client for the new version... then configured on the client"); and

- (g) upgrading said selected user terminal with said received absent updated

software versions (col. 1, lines 40-45 "...changing version of an application may

be updated...").

Per claim 2:

The rejection of claim 1 is incorporated and further, Birum discloses:

- broadcasting an inquiry in said sub-network in determining whether said unselected

user terminals include any of said absent updated software versions (col. 4, lines 44-

45 "A content server sends the list of resources in the most recent version together

with a purge list (Block 705)").

Per claim 3:

The rejection of claim 1 is incorporated and further, Birum discloses:

- registering at said system server after requesting from said system server a list of

said updated software versions that are absent in said selected user terminal (See

Fig. 2-3 and related discussion). .

Per claim 4:

The rejection of claim 1 is incorporated and further, Birum discloses:

- providing an agent in said selected user terminal in requesting said list of said

absent updated software versions (col. 1, lines 40-45 "...A list of resource in a

current version of an application is created and compared to the list of resources in a
new version...").

Per claim 5:

The rejection of claim 1 is incorporated and further, Birum discloses:

- receiving an inquiry broadcast by said unselected user terminals (col. 4, lines 44-45

    "A content server sends the list of resources in the most recent version together with

    a purge list (Block 705)"); and

- transmitting one of said updated software versions in response to said inquiry

    broadcast (col. 3, lines 27-34 "FIG. 5 illustrates a process for creating a purge list

    that is used when upgrading versions...").

Per claim 6:

The rejection of claim 1 is incorporated and further, Birum discloses:

- wherein said selected user terminal is upgraded within a predetermined time

    interval (col. 5, lines 33-35 "At a selected time, the software vendor may cause a

    switch to occur between versions").

Per claim 7:

The rejection of claim 1 is incorporated and further, Birum discloses:

- providing said selected user terminal with a first client-server structure and a

    second client-server structure (See Fig. 1 and related discussion); and providing

a client in said first client-server structure for requesting said list of said absent updated software versions (See Fig. 1 and related discussion).

Per claim 8:

The rejection of claim 7 is incorporated and further, Birum discloses:

- providing said first client-server structure with a first server for receiving an inquiry broadcast by said unselected user terminals (col. 4, lines 44-45 "A content server sends the list of resources in the most recent version together with a purge list (Block 705)" and See Fig. 1 and related discussion); and

- providing said second client-server structure with a second server for transmitting one of said updated software versions to one of said unselected user terminals in response to said inquiry broadcast (col. 4, lines 44-45 "A content server sends the list of resources in the most recent version together with a purge list (Block 705)" and See Fig. 1 and related discussion).

Per claim 9:

The rejection of claim 7 is incorporated and further, Birum discloses:

- providing said first client-server structure with a first client for requesting one of said absent updated software versions from said unselected user terminals (col. 4, lines 44-45 "A content server sends the list of resources in the most recent version together with a purge list (Block 705)" and See Fig. 1 and related discussion); and

- providing said second client-server structure with a second client for requesting

  one of said absent updated software versions from said system server (col. 4,

  lines 44-45 "A content server sends the list of resources in the most recent

  version together with a purge list (Block 705)" and See Fig. 1 and related

  discussion).

Per claim 10:

Birum discloses:

- A software upgrade control system comprising:

- a system server; a plurality of updated software versions provided at said system

  server (col. 1, lines 40-45 "...changing version of an application may be

  updated...");

- a sub-network including a first user terminal and a second user terminal; each

  user terminal including a first client-server structure and a second client-server

  structure (See Fig. 2-3 and related discussion);

- a first client-server structure and a second client-server structure of said first user

  terminal provided at said selected user terminals (col. 4, lines 44-45 "A content

  server sends the list of resources in the most recent version together with a

  purge list (Block 705)" and See Fig. 1 and related discussion);

- a client provided in said first client-server structure of said second user terminal

  for requesting from said system server a list of said updated software versions

  that are absent in said user terminal (col. 4, lines 44-45 "A content server sends

the list of resources in the most recent version together with a purge list (Block 705)" and See Fig. 1 and related discussion) and also for broadcasting an inquirty to the second user terminal to determine whether the second user terminal has at least one of said updated software versions that are absent in said first user terminal (col. 4, lines 44-45 "A content server sends the list of resources in the most recent version together with a purge list (Block 705)");

- a first server provided in said first client-server structure of said second user terminal for receiving inquiry broadcast by the first user terminal (col. 4, lines 44-45 "A content server sends the list of resources in the most recent version together with a purge list (Block 705)" and See Fig. 1 and related discussion);

- a second server provided in said second client-server structure of said second user terminal for transmitting one of said updated software versions to said first user terminal in response to said inquiry broadcast (col. 4, lines 44-45 "A content server sends the list of resources in the most recent version together with a purge list (Block 705)" and See Fig. 1 and related discussion);

- a first client provided in said second client-server structure of said second user terminal for receiving one of said absent updated software versions from said user terminal (col. 4, lines 44-45 "A content server sends the list of resources in the most recent version together with a purge list (Block 705)" and See Fig. 1 and related discussion); and

- a second client provided in said second client-server structure of said second user terminal for receiving one of said absent updated software versions from

said system server (col. 4, lines 44-45 "A content server sends the list of

resources in the most recent version together with a purge list (Block 705)" and

See Fig. 1 and related discussion).

Per claim 11:

The rejection of claim 10 is incorporated and further, Birum discloses:

- an agent provided in said selected user terminal in requesting said list of said

    absent updated software versions (col. 1, lines 40-45 "...A list of resource in a

    current version of an application is created and compared to the list of resources

    in a new version...").

Per claim 12:

The rejection of claim 10 is incorporated and further, Birum discloses:

- wherein said system server supports an interversion protocol (col. 8, lines 3-5

    "The transactions may take place over the Internet, WAN/LAN 100, or some

    other communications network" and See FIG. 2 and related discussion).

Per claim 13:

The rejection of claim 10 is incorporated and further, Birum discloses:

- wherein said system server supports a file transfer protocol (col. 8, lines 3-5 "The

    transactions may take place over the Internet, WAN/LAN 100, or some other

    communications network" and See FIG. 2 and related discussion).

Per claim 14:

The rejection of claim 10 is incorporated and further, Birum discloses:

- wherein said system server supports a file transfer assistant protocol (col. 8, lines 3-5 "The transactions may take place over the Internet, WAN/LAN 100, or some other communications network" and See FIG. 2 and related discussion).

Per claim 15:

The rejection of claim 10 is incorporated and further, Birum discloses:

- an agent in each of said user terminals for data communication between said first client-server structure and said second client-server structure (col. 8, lines 3-5 "The transactions may take place over the Internet, WAN/LAN 100, or some other communications network" and See FIG. 2 and related discussion).

Per claim 16:

The rejection of claim 10 is incorporated and further, Birum discloses:

- a local area network over which said system server communicates with each of said user terminals (col. 8, lines 3-5 "The transactions may take place over the Internet, WAN/LAN 100, or some other communications network" and See FIG. 2 and related discussion).

Per claim 17:

Birum discloses:

- A software upgrade control system, comprising:

- a system server that provides updated software versions (col. 1, lines 40-45 "...changing version of an application may be updated...");

- a plurality of user terminals grouped to form a sub-network (See Fig. 2-3 and related discussion);

- a first client-server structure formed in each of said user terminals to request from said system server a list of updated software versions that are absent (col. 1, lines 40-45 "...A list of resource in a current version of an application is created and compared to the list of resources in a new version..."), broadcast in said sub-network an inquiry as to whether any other user terminals have any updated software versions absent therein, and receive an inquiry broadcast by said other user terminals (col. 4, lines 44-45 "A content server sends the list of resources in the most recent version together with a purge list (Block 705)");

- a second client-server structure formed in each of said user terminals to transmit one of said updated software versions to one of said other user terminals (col. 4, lines 44-45 "A content server sends the list of resources in the most recent version together with a purge list (Block 705)" and See Fig. 1 and related discussion), receive an absent updated software version from one of said other user terminals having said absent updated software version (col. 4, lines 44-45 "A content server sends the list of resources in the most recent version together with a purge list (Block 705)" and See Fig. 1 and related discussion), and

- receive an absent updated software version from said system server if no other

  user terminals has said absent updated software version (col. 4, lines 44-45 "A

  content server sends the list of resources in the most recent version together with

  a purge list (Block 705)" and See Fig. 1 and related discussion); and

- an agent formed in each of said user terminals for data communication between

  said first and second client-server structures (col. 1, lines 40-45 "...A list of

  resource in a current version of an application is created and compared to the list

  of resources in a new version...").

Per claim 18:

The rejection of claim 17 is incorporated and further, Birum discloses:

- wherein said first client-server structure formed in each of said user terminals

  communicates with said system server in an interversion protocol (col. 8, lines 3-

  5 "The transactions may take place over the Internet, WAN/LAN 100, or some

  other communications network" and See FIG. 2 and related discussion).

Per claim 19:

The rejection of claim 17 is incorporated and further, Birum discloses:

- wherein said second client-server structure formed in each of said user terminals

  communicates with said system server in a file transfer protocol (col. 8, lines 3-5

  "The transactions may take place over the Internet, WAN/LAN 100, or some

  other communications network" and See FIG. 2 and related discussion).

Per claim 20:

The rejection of claim 17 is incorporated and further, Birum discloses:

- wherein said first client-server structure communicates with said other user

    terminals in an interversion protocol (col. 8, lines 3-5 "The transactions may take

    place over the Internet, WAN/LAN 100, or some other communications network"

    and See FIG. 2 and related discussion).

Per claim 21:

The rejection of claim 17 is incorporated and further, Birum discloses:

- wherein said second client-server structure communicates with said other user

    terminals in a file transfer protocol (col. 8, lines 3-5 "The transactions may take

    place over the Internet, WAN/LAN 100, or some other communications network"

    and See FIG. 2 and related discussion).

Per claim 22:

The rejection of claim 17 is incorporated and further, Birum discloses:

- a first storage for storing said updated software versions (col. 2, lines 1-6 "When

    the resources are located on a server then the client downloads the resources

    from the server, stores the resource locally, modifies a data structure to indicate

    that the resource is stored locally, and the resources are provided to the client").

Per claim 23:

The rejection of claim 22 is incorporated and further, Birum discloses:

- a second storage for storing said updated software versions that are   (col. 2, lines 1-6 "When the resources are located on a server then the client downloads the resources from the server, stores the resource locally, modifies a data structure to indicate that the resource is stored locally, and the resources are provided to the client").

Conclusion

9.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Satish S. Rampuria** whose telephone number is **(571) 272-3732**. The examiner can normally be reached on **8:30 am to 5:00 pm** Monday to Friday except every other Friday and federal holidays. Any inquiry of a general nature or relating to the status of this application should be directed to the **TC 2100 Group receptionist: 571-272-2100.**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wei Y. Zhen** can be reached on **(571) 272-3708**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR

only. For more information about the PAIR system, see http://pair-direct.uspto.gov.

Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Satish S. Rampuria
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Art Unit 2191

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